

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

VERNON RUSSUM, :  
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 Plaintiff, :  
 :  
 v. : Civil Action No. 00-684-JJF  
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 LARRY G. MASSANARI, :  
 Acting Commissioner of Social :  
 Security, :  
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 Defendant. :  
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**MEMORANDUM OPINION**

April 12, 2002

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court is an appeal pursuant to 42 U.S.C. § 405(g), filed by Plaintiff, Vernon Russum, seeking review of the final administrative decision of the Commissioner of the Social Security Administration denying Plaintiff's claim for Supplemental Security Income ("SSI") under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383 (the "Act") and Disability Insurance Benefits ("DIB") under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. Plaintiff has filed a Motion For Summary Judgment (D.I. 8) requesting the Court to enter judgment in Plaintiff's favor. In response to Plaintiff's Motion, Defendant has filed a Cross-Motion For Summary Judgment (D.I. 11) requesting the Court to affirm the Commissioner's decision. For the reasons set forth below, Defendant's Motion For Summary Judgment has been denied and Plaintiff's Motion For Summary Judgment has been granted. The decision of the Commissioner dated September 23, 1998 has been reversed and the case has been remanded for further findings and/or proceedings consistent with this Memorandum Opinion.

**BACKGROUND**

**I. Procedural Background**

On May 27, 1994, Plaintiff filed a concurrent claim for DIB and SSI benefits. Plaintiff's application was denied initially and on reconsideration.

On April 2, 1998, an administrative law judge (the "A.L.J.") conducted a hearing on Plaintiff's claims. On September 23, 1998, the A.L.J. issued a decision denying Plaintiff DIB and SSI benefits. Following the unfavorable decision, Plaintiff filed a timely Request For Review Of Hearing Decision. On June 6, 2000, the Appeals Council denied Plaintiff's request.

After completing the process of administrative review, Plaintiff filed the instant civil action pursuant to 42 U.S.C. § 405(g), seeking review of the A.L.J.'s decision denying his claim for DIB and SSI benefits. In response to the Complaint, Defendant filed an Answer and the Transcript of the proceedings at the administrative level.

Thereafter, Plaintiff filed a Motion For Summary Judgment and Opening Brief in support of the Motion. In lieu of an Answering Brief, Defendant filed a Cross-Motion For Summary Judgment requesting the Court to affirm the A.L.J.'s decision. Thereafter, Plaintiff filed a Reply Brief. Accordingly, this matter is fully briefed and ripe for the Court's review.

## **II. Factual Background**

### **A. Plaintiff's Medical History, Condition and Treatment**

At the time of the A.L.J.'s decision, Plaintiff was forty-three years old, and therefore, is considered a "younger person" under the regulations. 20 C.F.R. §§ 404.1563, 416.963(b).

Plaintiff has a ninth grade education and past work experience as

a welder, cook and machine operator. According to Plaintiff he has not engaged in substantial gainful activity since January 27, 1994. Plaintiff currently receives welfare payments and his wife receives SSI based on a learning disability. (Tr. 277).

On January 27, 1994, Plaintiff was involved in a motor vehicle accident. He was taken to the hospital and diagnosed with cervical and lumbar strains. (Tr. 191).

On February 1, 1994, Plaintiff began treating with Carl L. Smith, M.D. After an examination, Dr. Smith diagnosed Plaintiff with possible closed head injury, mild, cervical strain with spasms, lumbosacral strain with spasms and thoracic strain with spasms. Dr. Smith recommended that Plaintiff pursue outpatient therapy to improve his range of motion and reduce his pain. Dr. Smith also prescribed Relafen and Valium for Plaintiff. Dr. Smith opined that Plaintiff was temporarily totally disabled from working as a result of the motor vehicle accident. (Tr. 380).

On February 21, 1994, Plaintiff reported to the Medical Center of Delaware (the "Medical Center") as the result of a seizure he had at home. While at the Medical Center, Plaintiff had an episode of facial twitching and gasping lasting approximately one minute. After the episode, Plaintiff was disoriented and went to sleep. Plaintiff was diagnosed with "seizure atypical" and prescribed Dilantin. (Tr. 209).

On February 22, 1994, Plaintiff returned to Dr. Smith as a

result of the seizure that he had experienced. Dr. Smith opined that the seizures may have resulted from his auto accident, because he hit his head on the "A" frame of the car. Dr. Smith noted that the seizures may be a latent sign of an underlying injury and recommended that Plaintiff discontinue his outpatient treatment until the cause of his seizures could be determined. Dr. Smith opined that Plaintiff was temporarily totally disabled and stated that "[h]is seizure activity has now complicated the picture for his full recovery." (Tr. 374-375).

On February 25, 1994, Plaintiff presented to Alan J. Fink, M.D., a neurologist with complaints of headaches, left shoulder pain and neck aches. Plaintiff had treated with Dr. Fink in 1979 for a seizure disorder, and had last been seen by Dr. Fink in 1988. After assessing Plaintiff, Dr. Fink opined that Plaintiff had sustained a concussion to the neck, head and upper back as a result of his January 27, 1994 accident. Dr. Fink also noted that Plaintiff had a possible rotator cuff tear. With regard to Plaintiff's seizures, Dr. Fink opined that they were "most likely related to the accident or stress of the accident," and noted that he would be looking into Plaintiff's seizure condition further. (Tr. 243).

On March 8, 1994, Plaintiff also began treating with Leo W. Rasis, M.D. due to severe left shoulder pain. Dr. Rasis diagnosed Plaintiff with severe subacromial bursitis--left

shoulder and injected Plaintiff's left subacromial space. (Tr. 414).

On March 22, 1994, Plaintiff returned to Dr. Smith reporting of left shoulder pain. Dr. Smith noted that Plaintiff was unable to lift his arm past 90 degrees because of pain. Dr. Smith diagnosed Plaintiff with left subacromial bursitis, resolved cervical, thoracic and lumbar strains and seizure disorder. (Tr. 267). Dr. Smith recommended continued total disability and the resumption of physical therapy with emphasis on the left shoulder to improve Plaintiff's range of motion and decrease his pain. (Tr. 368).

On April 25, 1994, Plaintiff was admitted to the Medical Center of Delaware due to his left shoulder pain. Dr. Rasis performed a (1) left shoulder arthroscopic acromioplasty and release of coracoacromial ligament, and (2) left shoulder open distal clavicle excision. (Tr. 216). Dr. Rasis diagnosed Plaintiff post-operative with left shoulder impingement syndrome.

On April 31, 1994, Plaintiff reported to J.D. Willetts, Ph.D. for a psychological assessment. Dr. Willetts noted that Plaintiff had minimal academic/cognitive skills and a number of soft neurological signs which indicated the possibility of brain damage. (Tr. 250). Dr. Willetts did not order further testing, because he noted that Plaintiff was already being treated by a neurologist.

In May 1994, Plaintiff returned to Dr. Smith for a follow-up visit after Dr. Rasis operated on his left shoulder. (Tr. 361). Plaintiff presented with numbness over his left forearm and fingers and tender wrists. Dr. Smith also noted that Plaintiff continued to treat with Dr. Fink for his seizure disorder. Dr. Smith diagnosed Plaintiff with seizure disorder, left subacromial bursitis (post shoulder surgery), and possible carpal tunnel syndrome. (Tr. 362). Dr. Smith recommended that Plaintiff remain temporarily totally disabled.

In August 1994, Plaintiff was referred to the New Castle Community Mental Health Center for treatment for post-traumatic stress disorder due to his motor vehicle accident. Plaintiff presented with complaints of depression, weight loss, poor appetite, anxiety, suicidal ideation and irritability. (Tr. 450).

On September 4, 1994, Plaintiff was admitted to the Delaware State Hospital, because he took an overdose of Valium, Xanax and Dilatin as a suicidal gesture. (Tr. 251). Plaintiff was diagnosed with Axis I: Adjustment disorder with depressed mood, and (2) Axis III: Seizure disorder. (Tr. 252). Plaintiff was discharged on September 21, 1994.

On September 29, 1994, Plaintiff had a psychiatric evaluation with Dr. Gregg Villabona of the New Castle Community Mental Health Center. Dr. Villabona noted that Plaintiff had

significant impairments regarding attention and concentration. Dr. Villabona also noted that Plaintiff suffered from depression.

B. The A.L.J.'s Decision

On April 2, 1998, the A.L.J. conducted a hearing on Plaintiff's DIB and SSI claims. At the hearing, Plaintiff testified that he has a driver's license, but that his wife does most of the driving. (Tr. 48-49). He further testified that he could sit for an hour or two, stand for a couple of hours and lift 20 to 25 pounds with his left arm and 30 to 40 pounds with his right arm. (Tr. 50). Plaintiff testified that he performs daily household activities and reads, but that he has trouble concentrating and understanding what he is reading. (Tr. 45-46, 51-53).

In addition to this testimony, the A.L.J. also heard the testimony of a vocational expert, Nancy Harter. The A.L.J. asked the vocational expert to consider a hypothetical individual with Plaintiff's vocational characteristics and the ability to perform light work. (Tr. 75-76). The A.L.J. also asked the A.L.J. to assume that this individual could perform one-to-two step tasks, could not work in a noisy environment or around heights or heavy moving machinery, and could not interact well with co-workers and the public. The vocational expert opined that such a hypothetical individual could perform jobs at the light exertional level, such as office cleaner, security guard and



vehicle cleaner. (Tr. 78-79). However, the vocational expert also testified that if the individual was unable to accept instructions, unable to respond appropriately to criticism from supervisors and unable to get along with co-workers or peers, that he would be precluded from these jobs. (Tr. 83). The vocational expert further testified that the parameters for excused or unexcused absences were "once a month if you're lucky" and that most employers would not tolerate two or three absences per month. (Tr. 84).

In his decision dated September 23, 1998, the A.L.J. concluded that Plaintiff could not perform his past relevant work as a welder or machine operator. (Tr. 24). The A.L.J. found Plaintiff's "testimony and allegations generally credible, except regarding the severity of [his] impairments and their effect on his functional abilities." (Tr. 22). The A.L.J. noted that Plaintiff testified that he could perform daily chores and noted that his functional abilities were consistent with light work. (Tr. 21-22). The A.L.J. also concluded that Plaintiff's seizure disorder was not of a frequency or severity to prevent him performing light work. (Tr. 18). The A.L.J. concluded that Plaintiff's residual functional capacity for the full range of light work was "reduced by restrictions to jobs involving only one-to-two step tasks, minimal interaction with others, writing or money handling are not essential requirements of the job, low

noise and no heights or moving machinery." (Tr. 25). Based on his exertional capacity for light work, his age, education and work experience, the A.L.J. concluded that Section 404.1569 of Regulations No. 4 and Section 416.969 of Regulations No. 16 and Rule 202.18, Table No. 2 of Appendix 2, Subpart P, Regulations No. 4, would direct a conclusion of "not disabled." (Tr. 25).

#### **STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), findings of fact made by the Commissioner of Social Security are conclusive, if they are supported by substantial evidence. Accordingly, judicial review of the Commissioner's decision is limited to determining whether "substantial evidence" supports the decision. Monsour Medical Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986). In making this determination, a reviewing court may not undertake a de novo review of the Commissioner's decision and may not re-weigh the evidence of record. Id. In other words, even if the reviewing court would have decided the case differently, the Commissioner's decision must be affirmed if it is supported by substantial evidence. Id. at 1190-91.

The term "substantial evidence" is defined as less than a preponderance of the evidence, but more than a mere scintilla of evidence. As the United States Supreme Court has noted substantial evidence "does not mean a large or significant amount of evidence, but rather such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion." Pierce v. Underwood, 487 U.S. 552, 555 (1988).

With regard to the Supreme Court's definition of "substantial evidence," the Court of Appeals for the Third Circuit has further instructed, "A single piece of evidence will not satisfy the substantiality test if the [Commissioner] ignores or fails to resolve a conflict created by countervailing evidence. Nor is evidence substantial if it is overwhelmed by other evidence . . . or if it really constitutes not evidence but mere conclusion." Kent v. Schweiker, 710 F.2d 110, 114 (3d Cir. 1983). Thus, the substantial evidence standard embraces a qualitative review of the evidence, and not merely a quantitative approach. Id.; Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981).

#### **DISCUSSION**

By his Motion, Plaintiff raises two overlapping arguments. Plaintiff contends that the A.L.J. improperly evaluated and rejected the opinions of Plaintiff's treating physicians, Dr. Smith, Dr. Fink and Dr. Chacko. In so doing, Plaintiff further contends that the A.L.J. impermissibly substituted his opinions for the opinions of Plaintiff's treating physicians.

The Court of Appeals for the Third Circuit has long adhered to the "treating physician doctrine." See e.g. Mason v. Shalala, 994 F.2d 1058, 1065, 1067 (3d Cir. 1993); Podedworny v. Harris,

745 F.2d 210, 217 (3d Cir. 1984). According to this doctrine, a treating physician's opinion is entitled to significant weight.

Id. Indeed, the opinion of a treating physician is generally entitled to more weight than the opinion of a consultative physician or a physician whose only obligation is to check a box or fill in a blank. See e.g. Mason, 994 F.2d at 1067; Cruz v. Massanari, 2001 WL 1159855, \*3 (E.D. Pa. Aug. 28, 2001).

Further, when a treating physician's opinion is supported by medically acceptable clinical and laboratory diagnostic techniques and is consistent with other evidence in the record, it is entitled to controlling weight. Fargnoli v. Massanari, 247 F.3d 34, 42 (3d Cir. 2001). However, an A.L.J. may reject the opinion of a treating physician if he or she adequately explains the reasons for doing so on the record. Mason, 994 F.2d at 1067 ("An A.L.J. may not reject a physician's findings unless he first weighs them against other relevant evidence and explains why certain evidence has been accepted and why other evidence has been rejected."); Allen v. Bowen, 881 F.2d 37, 41 (3d Cir. 1989). The A.L.J.'s reasons for rejecting a medical opinion may not be based on his own medical judgments, but on a discussion of the record evidence. See e.g. Frankenfield v. Bowen, 861 F.2d 405, 408 (3d Cir. 1988) (holding that "the medical judgment of a treating physician can be rejected only on the basis of contradictory medical evidence" and requiring A.L.J. to point to

such evidence in his decision). To this effect, the Third Circuit has repeatedly emphasized the need for the A.L.J. to provide an adequate explanation for the rejection of relevant evidence that supports the claimant, but is inconsistent with the A.L.J.'s findings. Fagnoli, 247 F.3d at 42-43; Cotter v. Harris, 642 F.2d 700, 705-707 (3d Cir. 1980).

In this case, the A.L.J. recognized the principle that a treating physician's opinion is entitled to considerable weight, but did not apply that principle fully and consistently. Although the A.L.J. noted the medical findings of Dr. Smith in his decision, the A.L.J. failed to provide the Court with any discussion weighing Dr. Smith's opinion against the other medical evidence in the record. Indeed, the A.L.J. did not provide any reasons for rejecting Dr. Smith's opinion and did not even make an express determination regarding the credibility of Dr. Smith's opinion.

Defendant acknowledges that the A.L.J. "technically" failed to analyze Dr. Smith's opinion. However, Defendant suggests that the A.L.J. was not required to evaluate Dr. Smith's opinion, because it was rife with inconsistencies, incredible and based on sentiment, not science. The Court disagrees with Defendant. The requirement that the A.L.J. explain his or her reasons for accepting or rejecting evidence is not a mere technicality. The failure to adhere to this requirement has "ripple effects" for

the claimant at all stages of the proceedings. Without an adequate explanation of the A.L.J.'s reasons for rejecting certain evidence, the Court cannot be certain that the claimant received due consideration of his claim at the administrative level. Further, without such explanation, the Court cannot conduct a meaningful review on appeal. It may be, as Defendant contends, that the A.L.J. found Dr. Smith's opinion to lack credibility, however, the Court cannot determine whether substantial evidence supports that conclusion because the A.L.J. provided no statement rejecting the opinion and no explanation for the rejection. Because the A.L.J. did not perform the required analysis necessary to substantiate the rejection of a treating physician's opinion, the Court cannot properly review the A.L.J.'s determination.<sup>1</sup> Accordingly, the decision of the Commissioner dated September 23, 1998 has been reversed and the case has been remanded for further findings and/or proceedings consistent with this Memorandum Opinion.

### **CONCLUSION**

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<sup>1</sup> Plaintiff also contends that the A.L.J.'s analysis regarding Dr. Fink and Dr. Chacko's opinions is deficient. Specifically, Plaintiff contends that the A.L.J. based his rejection of these medical opinions solely on his own medical judgments. Unlike his treatment of Dr. Smith's opinion, the A.L.J. did provide some analysis for his rejection of Dr. Fink and Dr. Chacko's opinions. Although his analysis rejecting these opinions could arguably be more thorough, the A.L.J. did provide some reference to the medical evidence in the record. Accordingly, the Court cannot conclude that the A.L.J.'s analysis of these opinions is legally deficient as Plaintiff contends.

For the reasons discussed, Defendant's Motion For Summary Judgment has been denied, and Plaintiff's Motion For Summary Judgment has been granted. The decision of the Commissioner dated September 23, 1998 has been reversed and the case has been remanded for further findings and/or proceedings consistent with this Memorandum Opinion.

An appropriate Order has been entered.